IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2479 OF 2004

Ismail Raju Ajmeri @ Isala .. Applicant.
Vs.
1.Nitin V.Helgaonkar,
Intelligence Officer, Narcotic
Control Bureau. ..
2.State of Maharashtra .. Respondents.

Mr.Prakash Naik for the applicant.
Mr.H.V.Mehta APP for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 12TH AUGUST, 2004

P.C.:

. Heard Mr.Naik, learned counsel for the applicant and Mr.Mehta, learned A.P.P. for the respondent.

2. The applicant has filed this application for being released on bail in Special Case No.96/2002. The applicant alongwith six others are involved in a case under section 29 read with 8(c), 21, 27(a) and 28 of the N.D.P.S. Act (for short "the Act"). It is the prosecution case that on receipt of the secret information two cars were intercepted and inmates of the car came to be

arrested who were to exchange Rs.15 lacs with contraband substance. During the search of the cars Rs.15 lacs were found in one car, however, no contraband was found in either of the cars. Both the cars were seized by the investigating agency. Out of these two cars, one car was belonging to Manoj Ranavat. Manoj Ranavat had filed an application in this court bearing Criminal Application No.2564 of 2004 and he was granted bail by the order dated 19.7.2004. The allegation against Manoj Ranavat was that he had financed for the purpose of purchasing contraband to one Rajkumar Kaknani. He had so admitted in the statement recorded under section 67 of the Act. In so far as the present applicant is concerned, the allegation against him is that he was to supply contraband and since it was not in a good condition he could not do so as a result of which no contraband was found in possession of any of the accused persons involved in the case. It is in this backdrop of the facts Mr.Naik, learned counsel for the applicant submitted that there is absolutely nothing on record to indicate that the applicant was to supply contraband. He further submitted that in the absence of recovery of contraband article, no case whatsoever is made out

against the applicant having involved in the said case. His statement under section 67 is the only evidence against the applicant and, therefore, he prayed for bail on parity with Manoj Ranavat, who has been granted bail by this court.

3. I have perused the order dated 19.7.2004 passed by this court, the order passed by the Sessions Court rejecting the applicant's prayer for bail and other material placed before me. While appreciating the submissions of Mr.Naik it will have to be borne in mind that the applicant has been charged for the offence under section 28 of the Act which provides that whoever attempts to commit any offence punishable under Chapter IV or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punishable for imprisonment provided for the offence. Keeping this provision in view I examined the material produced before me. It is clear from the facts that on receipt of the secret information a trap was arranged at the place where the accused persons were to exchange amount with contraband. As per the information, the cars arrived at location and they were intercepted by the investigating team. The car which was to carry

contraband article was to come from Madhya Pradesh and they were to exchange contraband with the amount of Rs.15 lacs on 7.7.2002. When the cars were searched, in one car Rs.15 lacs were found, however, the contraband was not recovered. It has come on record that the applicant was to supply contraband to Rajkumar Kaknani. In his statement under section 67 of the Act, the applicant has admitted that he has been in drug trafficking for more than 10 years. He has given detail account as to how they had decided to exchange the contraband with Rs.15 lacs. It is clear from the statement of the applicant recorded under section 67 that he was to supply contraband article which in fact he could not for the reasons best known to him. It is thus clear that the secret information received by the police was correct. Moreover, against the present applicant, two more cases under the provisions of NDPS Act are still pending and in 1999 he was arrested in one other case for allegedly supply of heroine to one Jabbar and nearly two and half years he was in jail in connection with the said crime. This shows that the applicant was actively involved in drug trafficking. In my opinion, the aforesaid material is sufficient, at this stage, to believe that the attempt to commit offence under the

provisions of Chapter IV of NDPS Act was being made by the applicant constituting an offence under section 28 of the Act. Keeping that in view and the adverse antecedents of the applicant showing his involvement in drug trafficking I am not inclined to enlarge him on bail. In my opinion, he is not entitle for bail even on parity with co-accused Manoj Ranavat. This court while disposing of Criminal Application No. 2842 of 2003 filed by one Rajkumar Kaknani had directed the trial court to complete the trial within one year from 20.1.2004. Considering that, the applicant is directed to co-operate disposal of the trial before 20.1.2005. This application is rejected.

(D.B.Bhosale, J.)